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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

CARMIESHRA Y. GORMAN, Plaintiff and Appellant, v. INTERINSURANCE EXCHANGE OF THE AUTO CLUB, Defendant and Respondent.	B265176 (Los Angeles County Super. Ct. No. BC 505976)

APPEAL from a judgment and order of the Superior Court of Los Angeles County, Howard Halm, Judge. Affirmed.

Carmieshra Y. Gorman, in pro. per.

Richardson, Fair & Cohen and Stephen M. Kalpakian for Plaintiff and Respondent.

INTRODUCTION

Appellant Carmieshra Y. Gorman appeals from a judgment and order dismissing respondent Interinsurance Exchange of the Auto Club from her complaint for damages arising from a vehicular accident. She contends the trial court erred in dismissing respondent, as she asserted an independent cause of action against the company for negligently insuring a medically unfit driver. We affirm.

FACTUAL BACKGROUND & PROCEDURAL HISTORY

On April 16, 2013, appellant filed a complaint for damages against respondent and Regina Wright Cole, alleging causes of action for motor vehicle injury, negligence and "intent." The complaint alleged that on April 28, 2011, Cole negligently drove her vehicle, colliding with appellant's vehicle and causing appellant to suffer permanent injuries. It was further alleged that because respondent "elected to insure" Cole, it was "involved in and responsible for" Cole's actions.

On March 30, 2015, respondent filed a motion for judgment on the pleadings, arguing that it was an improper party to the lawsuit. Citing *Billington v. Interinsurance Exchange of Southern California* (1962) 71 Cal.2d 728 (*Billington*), respondent asserted that it could be named as a defendant only after appellant secured a judgment against Cole.

Appellant opposed the motion, arguing (1) that the motion was untimely; (2) that respondent was liable for the accident under the doctrine of comparative negligence; and (3) that *Billington*, was inapplicable, as appellant was asserting a direct cause of action for negligence against respondent.

On April 24, 2015, the trial court granted respondent's motion for judgment on the pleadings. Respondent was dismissed with prejudice from the complaint.

On May 13, 2015, appellant filed a motion for reconsideration of the judgment of dismissal. (See Code Civ. Proc., § 1008.) Concurrently, she filed a notice of amended complaint and a first amended complaint. Appellant argued that -- as more clearly explained in the first amended complaint -- she was asserting a cause of action against respondent based on the theory that "the insurer and its agents were negligent in contracting a policy with . . . Cole, and willful in renewing that policy despite [Cole's] medical condition." Appellant further argued that the insurance policy between respondent and Cole was void because it unlawfully provided coverage for acts prohibited by statute or regulation.

On June 4, 2015, respondent, specially appearing, filed an opposition to appellant's motion for reconsideration. Respondent argued that the trial court should deny the motion, as the court lacked jurisdiction to entertain the motion for reconsideration after judgment had been entered. Alternatively, respondent contended that appellant had not presented any new or different facts or law to support her motion for reconsideration.

Appellant filed a reply, arguing that the trial court had jurisdiction to consider her motion for reconsideration, as she had asked the court to "revoke" its prior judgment. She also argued that the first amended complaint satisfied the requirement of new facts or circumstances.

At the June 17, 2015 hearing on appellant's motion, the trial court considered appellant's argument that respondent was negligent in insuring Cole, but held that no such cause of action existed. It also ruled that any claim that the insurance policy was void could be brought only where the insurance company failed to pay the judgment issued against its insured. Later that day, the trial court

entered an order denying appellant's motion for reconsideration, determining that appellant had provided no new or different facts and no new law.

On June 29, 2015, appellant noticed an appeal from the April 24, 2015 judgment and the June 17, 2015 order denying her motion for reconsideration.

DISCUSSION

Insurance Code section 11580, subdivision (b)(2) generally provides that a liability insurance policy shall not be issued unless it contains "[a] provision that whenever judgment is secured against the insured or the executor or administrator of a deceased insured in an action based upon bodily injury, death, or property damage, then an action may be brought against the insurer on the policy and subject to its terms and limitations, by such judgment creditor to recover on the judgment."[1] The statute further provides that whether or not a liability insurance policy actually contains the provision, the policy shall be construed as if the provision were embodied therein. (§ 11580.)[2] The California Supreme Court has held that pursuant to section 11580, subdivision (b)(2), "an injured party is compelled to bring two lawsuits if he seeks to collect a judgment from the insurer which issued a liability policy." (*Billington*, *supra*, 71 Cal.2d at pp. 744-745.) The first lawsuit is against the insured, the second against the insurer. (See *Wright v.*

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[1] All further statutory citations are to the Insurance Code, unless otherwise stated.

[2] The insurance policy issued to Cole contains an analogous provision: "Suit may not be brought against us unless there has been full compliance with all terms of this policy and the obligation to pay, by a person insured, is finally determined either by judgment against the person insured after actual trial or by written agreement of the person insured, the claimant and us. No one shall have the right to make us a party to a lawsuit to determine the liability of any person injured."

Fireman's Fund Ins. Companies (1992) 11 Cal.App.4th 998, 1015 (*Wright*) ["Under section 11580, the judgment against the insured is clearly an essential element of the claimant's right to recover against the insurer."].) Thus, "[t]o sue an insurer directly, a party must have obtained a final judgment against the insured." (*Id*. at p. 1016)

Here, despite not having obtained a judgment against Cole for appellant's injuries arising from the accident -- a potentially covered occurrence under the policy issued by respondent -- appellant sued respondent directly. Under section 11580 and existing case law, appellant was precluded from doing so. Her argument that it would be "a more expeditious approach" to allow the action against the insured and the action against the insurer to proceed at the same time in a single action effectively seeks to amend section 11580, and is more properly addressed to the Legislature.

Appellant contends she asserted a direct action against the insurer for an independent tort -- negligent insuring of a medically unfit driver. She has cited no statute or case authority -- and we have found none -- supporting the existence of such a cause of action. Moreover, even if such a cause of action existed, appellant has demonstrated neither causation nor legal injury. Respondent's issuance of an insurance policy did not cause Cole to negligently operate her vehicle. Moreover, until and unless respondent refuses to pay a judgment against Cole for causing appellant's injuries, appellant has suffered no legal injury.

Appellant further contends that respondent was not entitled to the contractual benefits set forth in section 11580 because the insurance policy at issue was void from its inception. She argues that under section 533, an insurer is not obligated to enter into a policy with a medically unfit driver who "willfully and negligently operate[s] a motor vehicle." By doing so, appellant contends,

respondent created a contract subject to Civil Code section 1668, which provides that contracts to perform acts prohibited by statute or regulation are void from their inception.[3] Aside from being based on an invalid theory of liability -- negligent insuring -- appellant's contention fails on both legal and factual grounds. Section 533 provides: "An insurer is not liable for a loss caused by the wilful act of the insured; but he is not exonerated by the negligence of the insured, or of the insured's agents or others." It "codifies the general rule that an insurance policy indemnifying the insured against liability due to his own wilful wrong is void as against public policy" (*Arenson v. Nat. Automobile & Cas. Ins. Co*. (1955) 45 Cal.2d 81, 84), and represents "'an implied exclusionary clause which by statute is to be read into all insurance policies.'" (*J. C. Penney Casualty Ins. Co. v. M. K.* (1991) 52 Cal.3d 1009, 1019, quoting *United States Fid. & Guar. Co. v. American Employer's Ins. Co*. (1984) 159 Cal.App.3d 277, 284.) Thus, as a matter of law, insurance contracts cannot provide coverage for willful acts. (See *Interinsurance Exch. v. Flores* (1996) 45 Cal.App.4th 661, 672 [insurer may deny coverage because stipulated facts show insured harbored intent to harm within the meaning of section 533].) Consonant with section 533, the insurance policy at issue here expressly excludes coverage for bodily injury or property damage intentionally caused by the insured. Moreover, the facts alleged in appellant's complaint sound in ordinary negligence. (See *J.C. Penney Casualty Ins. Co. v. M. K.* , *supra*, 52 Cal.3d at p. 1021, ["Wilful act" as used in section 533 "'means "something more

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[3] Although appellant cites Civil Code section 1667 in her appellate brief, it appears she intended to cite Civil Code section 1668. That statute provides: "All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law." (Civ. Code, § 1668.)

than the mere intentional doing of an act constituting [ordinary] negligence.""""].) Thus, any coverage for the accident alleged would not violate section 533. In short, the insurance policy issued by respondent is not void as against public policy, and the trial court properly dismissed respondent from appellant's complaint for damages.

Likewise, the trial court properly denied appellant's motion for reconsideration, as appellant cited no new facts, circumstances, or law. (See Code Civ. Proc., § 1008, subd. (a) [motion for reconsideration requires "new or different facts, circumstances, or law"].) As detailed above, in her original complaint, appellant had alleged that respondent was "involved in and responsible for" Cole's actions because it "elected to insure" Cole. In her motion for reconsideration, appellant merely developed her theory of negligent insuring by citing additional case law and adding factual allegations. Nowhere did she explain her failure to present the case law and factual allegations previously. Thus, the court did not err in denying the motion for reconsideration. (See *Baldwin v. Home Savings of America* (1997) 59 Cal.App.4th 1192, 1200 [trial court has no jurisdiction to reconsider a prior order on the basis of "'different facts'" or "'different law'" in the absence of a satisfactory explanation for the failure to present them earlier].)

DISPOSITION

The judgment and order are affirmed. Respondent is awarded its costs on appeal.

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MANELLA, J.

We concur:

WILLHITE, Acting P. J.

COLLINS, J.